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Attorneys for Defendants

11
12 **UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 **OAKLAND DECISION**

14 PACIFIC COAST FEDERATION OF
FISHERMEN'S ASSOCIATIONS, *et al.*,

15 Plaintiffs,

16 and

17 YUOK TRIBE and HOOPA VALLEY
18 TRIBE,

19 Plaintiff-Intervenors,

20 v.

21 UNITED STATES BUREAU OF
RECLAMATION, and NATIONAL MARINE
22 FISHERIES SERVICE,

23 Defendants,

24 and

25 KLAMATH WATER USERS
ASSOCIATION,

26 Defendant-Intervenors.
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Civil No. 02-2006 SBA

**JOINT STIPULATION
REGARDING PLAINTIFFS' CLAIM
FOR ATTORNEYS' FEES AND COSTS
AND ORDER**

1 Plaintiffs, Pacific Coast Federation of Fishermen's Associations, et al., and
2 Defendants U.S. Bureau of Reclamation ("Reclamation"), and the National Marine
3 Fisheries Service ("NMFS") (collectively "Federal Defendants"), state the following:

4 WHEREAS, Plaintiffs brought this action under the Endangered Species Act and
5 Administrative Procedure Act to challenge the 2002 biological opinion issued by NMFS
6 for Reclamation's operation of the Klamath Project;

7 WHEREAS, on July 14, 2003, the Court granted in part and denied in part
8 Plaintiffs' motion for summary judgment, and held that the Phase III flows in NMFS's
9 2002 biological opinion were arbitrary and capricious, but declined to require any
10 modification of the Phase I or Phase II flows;

11 WHEREAS, on October 18, 2005, the Ninth Circuit determined that NMFS had
12 not conducted the requisite analysis for the Phase I and Phase II flows and remanded the
13 matter to the district court for the issuance of an appropriate injunction;

14 WHEREAS, the mandate issued on December 30, 2005;

15 WHEREAS, on March 25, 2006, this Court granted Plaintiffs' motion for
16 injunction following remand;

17 WHEREAS, on May 25, 2006, this Court granted Federal Defendants' motion for
18 reconsideration pursuant to Fed. R. Civ. P. 59(e);

19 WHEREAS, on April 6, 2005 and Plaintiffs filed a motion for attorneys' fees and
20 costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, for fees and costs
21 incurred in litigating this action;

22 WHEREAS, Plaintiffs and Federal Defendants agree that it is in the interest of the
23 parties and judicial economy to settle Plaintiffs' claim for attorneys' fees and costs in this
24 action without further litigation; and

25 WHEREAS, the parties enter this Stipulation without any admission of fact or
26 law, or waiver of any claims or defenses, factual or legal.
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1 NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES AS
2 FOLLOWS:

3 1. This motion is jointly submitted in accordance with the Federal Rules of
4 Civil Procedure, the Federal Rules of Appellate Procedure, and the Local Rules of this
5 Court, and the parties move this Court to approve this stipulation and sign the enclosed
6 order.

7 2. Subject to the provisions in paragraph 4 below, Federal Defendants agree
8 to settle all of Plaintiffs' claims for costs and attorneys' fees related to the challenge to
9 NMFS's 2002 Klamath Project biological opinion in the above-captioned litigation for a
10 total of \$192,000.00. Federal Defendants will issue a check in that amount or, as
11 appropriate, make a wire transfer to the specified account of:

12 Earthjustice
13 705 Second Avenue, Suite 203
14 Seattle, WA 98104-1711

15 3. Plaintiffs agree to accept payment of \$ 192,000.00 in full satisfaction of
16 any and all claims for attorneys' fees and costs of litigation related to the above-
17 captioned litigation, through and including the date of this agreement.

18 4. This agreement does not apply to any fees that may result from work on a
19 future appeal of this matter to the United States Court of Appeals for the Ninth Circuit.
20 The parties agree that should Plaintiffs prevail on appeal, this agreement is without
21 prejudice to Plaintiffs' right to seek attorneys' fees and costs related to any appeal
22 subsequent to the date of this agreement. Federal Defendants reserve all arguments and
23 defenses with respect to any such future fee application.

24 5. Federal Defendants agree to submit all necessary paperwork to funding
25 authorities at the Department of the Treasury within ten (10) business days of receipt of
26 the signed court order approving this stipulation.
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1 6. This stipulation as to attorneys' fees and costs has no precedential value
2 and its contents shall not be used as evidence in any other attorneys' fees litigation. By
3 this agreement, Federal Defendants do not waive any right to contest fees claimed by
4 Plaintiffs or Plaintiffs' counsel, including the hourly rate, in any future litigation.

5 7. In an e-mail dated July 19, 2006, Counsel for the Plaintiffs, Kristen
6 Boyles, authorized S. Jay Govindan, counsel for the Federal Defendants, to sign this joint
7 stipulation and enter it in the ECF system.

8 IT IS SO STIPULATED.

9
10 Dated: July 21, 2006

 Dated: July 21, 2006

11
12 /s/
13 KRISTEN L. BOYLES, Staff Attorney
14 Earthjustice
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16 Seattle, WA 98104-1711
17 Tel: (206) 343-7340
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19 Attorney for Plaintiffs

 /s/
 S. JAY GOVINDAN, Trial Attorney
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 Tel: (202) 305-0237
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 Attorney for Federal Defendants

20 **ORDER**

21 The Court hereby approves and orders each and every term of this stipulated
22 settlement.

23 IT IS SO ORDERED.

24 Dated this 7th day of August, 2006.

25 *Saundra B. Armstrong*
26 _____
27 Hon. Saundra Brown Armstrong
28 United States District Judge

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